

Nebraska Public Service Commission

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ANDY S. POLLOCK October 28, 2004

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

ORIGINAL

Re: Written Ex Parte filed in the proceedings captioned: IP-Enabled Services proceeding - WC Docket 04-36; In the Matter of Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211.

Dear Chairman Powell:

On October 20, 2004, the National Association of Regulatory Utility Commissioners (NARUC) filed an ex parte letter with the Commission. The Nebraska Public Service Commission (NPSC) would like to be on record echoing the concerns raised by the NARUC in that letter. The NPSC has been likewise concerned about recent reports that the Commission is planning to segregate the jurisdictional issues relating to IP enabled services from other issues in that proceeding. Such a decision would have a serious detrimental impact on consumers in Nebraska and leave issues relative to Voice over the Internet Protocol (VoIP) service in a continued state of confusion pending the resolution of the underlying substantive issues.

Regardless of the ultimate jurisdictional finding, the NPSC urges the Commission to resolve the substantive issues such as intercarrier compensation, universal service, and separations issues concurrent with or prior to deciding the issue of jurisdiction on IP Enabled services. The NPSC agrees with the NARUC position that a segregated ruling could "destabilize intrastate access charge regimes as well as erode the support base" for state universal service programs.¹

Like many other states, the NPSC's universal service program is based on intrastate assessments. Avoiding the real issues underlying VoIP, along with the failure to address universal service obligations of IP enabled providers will increase pressures on our state universal service program and will potentially lead to devastating rate increases for rural and low-income consumers. Furthermore, the Commission has placed the majority of the high cost universal service funding requirements on the states. It is disingenuous to then seek to pre-empt states from the means necessary to fund this obligation by exempting services which currently use the network.

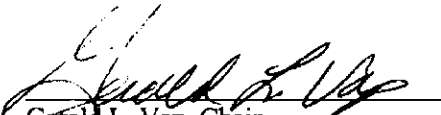
¹ Letter to Chairman Powell from NARUC dated October 20, 2004, citing Rosenberg, Ed, Hee Lee, Chang & Perez-Chavolla, Lilia, STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF THE NRRI'S 2001-2002 SURVEY, The National Regulatory Research Institute, Columbus, Ohio (June 2002) at pages 45-6.

Your comment that states have or will rush to unduly regulate VoIP is without merit. The NPSC has no plans to hamper the development of emerging technologies. Moreover, despite opportunity to do otherwise, the NPSC has only opened a limited proceeding to determine whether VoIP providers should be required to contribute to the state universal service fund. The NPSC's primary concern with the introduction of VoIP has been and continues to be how to safeguard consumers from the forecasted detrimental impacts on universal service programs and the access charge regime this emerging technology brings with it evidenced by related proceedings before the Commission.

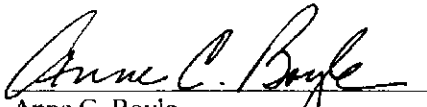
To segregate the jurisdictional issue from the underlying substantive issues would be grossly unfair to the states with whom you have had a cooperative relationship. States continue to want for action on the substantive issues. We hope that our guidance is useful to your deliberation.

In closing, Chairman Powell, the NPSC extends an open invitation to you to visit our state to provide you with a broader view of the difficulties faced in providing services and the challenges in attracting cost efficient, new-age products in some of the most under-populated areas of our country. The directive in 1934 was universal service to all. Rural areas were not excluded.

Regards,


Gerald L. Vap, Chair


Rod Johnson, Vice-Chair


Anne C. Boyle


Frank E. Landis


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